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IN THE

Supreme Court of the United States

October Term, 1951

No. 598

GREGORY R. MARTINI,

Petitioner,

against

UNITED STATES OF AMERICA, ROBERT W. GROVES, ROBERT W. GROVES, JR., HARRY G. STRACHAN, FRANK G. STRACHAN, F. D. M. STRACHAN, JR., JOHN MORRELL, LUCY B. TROSDAL and E. S. TROSDAL, JR., co-partners, trading as SOUTH ATLANTIC STEAMSHIP LINE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

GASPER S. FASULLO and
HERMAN E. HOBERMAN,
Proctors for Petitioner.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Gregory R. Martini, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Second Circuit entered in the above entitled case on November 30, 1951.

Opinion Below

The opinion of the United States Court of Appeals for the Second Circuit is reported, 192 F. (2d) 649.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Question Presented

(1) Whether it was the intention of this Honorable Court in the case of *Seas Shipping Co. Inc.* v. *Sieracki*, 66 S. Ct. 872, 328 U. S. 85, to grant to stevedores working aboard vessels a cause of action predicated on unseaworthiness and at the same time to withhold such right from other persons performing ship repairs traditionally done by seamen.

Statement

This is an appeal from an affirmance of a final decree dismissing the libel on the authority of *Guerrini* v. *United States*, 167 F. (2d) 352, 2nd Cir. 1948, holding that it was beyond the province of a Court of Appeals to interpret the meaning of the holding in the case of *Seas Shipping Co. Inc.* v. *Sieracki*, 66 S. Ct. 872, 328 U. S. 85 by the Supreme Court of the United States, so as to extend to persons employed aboard a vessel in navigation, other than seamen and stevedores, the warranty of a seaworthy vessel.

Facts

The case was tried only as against United States of America.

The action against South Atlantic Steamship Line was dismissed on petitioner's motion on the basis of the decision in the case of *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783.

On the 31st day of October, 1945, petitioner was assigned to check what repairs were required aboard the S. S. James Jackson, which was then in the navigable waters of the North River, docked at 132nd Street, New York City.

Petitioner reported to Auguste A. Bouchard, the chief engineer at his room aboard the vessel. The chief engineer

went with petitioner and Leroy Thomas Kanapaux, George Cardinal and John Skaar to the #2 hold.

The chief engineer stated that he was having trouble with water backing up into the troops' galley because water would not drain through the scupper line when the vessel was out at sea. Several hatch boards were removed at which time petitioner asked for a light and an extension ladder. The light was obtained and lowered into the hold. The chief engineer stated he did not have any ladder aboard and for Martini to use the batten boards to climb up to inspect the valve which was causing trouble.

Martini, Cardinal and Skaar descended into the hold. The chief did not, stating he was too busy.

After descending into the hold, Cardinal used a flash light while Skaar and petitioner were climbing up to ascertain the difficulties. Petitioner had been told by the chief engineer that he should examine the clapper valve by climbing the sweat battens. The petitioner did as he was instructed by the chief engineer and after climbing approximately 18 to 20 feet, one of the clips supporting the sweat batten broke as the petitioner took hold of the slip with his right hand, causing the petitioner to fall and suffer two broken legs and other serious and permanent injuries.

The need and propriety of the inspection was established by the testimony of:

(a) the petitioner, an experienced ship's inspector; Folios 84-93, 100-103;

(b) Captain Andersen, a licensed master since 1906; Folios 68-73;

(c) Skaar, the petitioner's foreman; Folios 125-130;

(d) Kanapaux, assistant marine superintendent, the respondent's witness; Folios 140-141; and in addition thereto the testimony of

(e) a disinterested witness under subpoena, Captain E. R. Downing, a United States government employee at the time of the trial; Folios 149-154.

Reasons for Granting the Writ

The decision of the Court below is discriminatory, unwarranted and unsupported by the evidence and contrary to the trend of decisions by this Honorable Court holding that the shipping community which receives the services should distribute and bear the loss resulting from injury by reason of unseaworthiness, and not any person injured aboard ship, while engaged in duties formerly performed by seamen.

The opinion of this Honorable Court in the case of *Seas Shipping Co. Inc.* v. *Sieracki, supra,* should have been liberally construed by the Court below and not given a restricted meaning so as to favor one class of employees over another, engaged in performing those duties on a ship which duties were formerly performed by seamen.

This Honorable Court has stated in the *Sieracki* case, *supra,* that the shipowner's liability for unseaworthiness is absolute and " * * * not confined to seamen who perform the ship's service under immediate hire to the owner, but extends to those who render it with his consent or by his arrangement," (328 U. S. at p. 95) and therefore it was error for the Court below to limit the word "those", exclusively to members of the crew and stevedores, so as to exclude a shore mechanic working under the direct orders and supervision of the ship's Chief Engineer.

It was error to discriminate between the rights of a seaman and a longshoreman on the one hand and the right of a business guest or invitee on the other, on the question of the duty imposed on the shipowner to provide any or all of them with a seaworthy place in which to work aboard the ship.

The Court of Appeals for the Second Circuit, in the case of *Guerrini* v. *United States*, 167 Fed. (2d) 352, expressly left open for decision by this Honorable Court the question as to whether the doctrine of the *Sieracki* case, *supra,* should be extended so as to include shore workers performing the traditional work of seamen on shipboard. The Court said at page 354, "At any rate it is proper, if such an innovation is to be made, that it should await the sanction of the Supreme Court in the exercise of its function of supplying the inadequacies of the past."

Conclusion

Martini, having been invited aboard the vessel to perform duties formerly performed by seamen, was entitled to protection from injury by reason of unseaworthy conditions.

Martini, working under the direct supervision and control of the ship's Chief Engineer aboard the vessel, was entitled to the same measure of protection as a member of the crew.

The mere fact that Martini had not signed the shipping articles or was not a longshoreman should not give the shipowner immunity from liability for damages caused by an unseaworthy condition of the vessel.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

GASPER S. FASULLO and
HERMAN E. HOBERMAN,
Proctors for Petitioner.

JACOB RASSNER,
of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 598

GREGORY R. MARTINI, PETITIONER

v.

THE UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 53–56) has not been reported. The opinion of the Court of Appeals for the Second Circuit (R. 75–77) has been reported at 192 F. 2d 649.

JURISDICTION

The judgment of the Court of Appeals was entered on November 30, 1951 (R. 78). The petition for a writ of certiorari was filed on February 20, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

While petitioner, a supervisory employer of a shipyard, was engaged in the survey of a vessel in order to determine the defects requiring repair, he climbed the cargo battens[1] which are not intended to be used as ladders.[2] No one had requested petitioner to do this and none of the prospective repairs required this particular exploration. One of the clips holding a batten gave way due to a structural, unnoticeable defect, causing petitioner to fall. The questions presented are:

1. Whether the ship owed petitioner a warranty of seaworthiness.

2. Whether the hidden defect in the batten clip rendered the ship unseaworthy.

STATUTES INVOLVED

No statutes are involved in this case.

STATEMENT

In the fall of 1945 petitioner was employed as a general supervisor (R. 26) or superintendent (R. 57, 75) of the Cardinal Engineering Company (hereafter referred to as Cardinal) which operated a shipyard (R. 57). On October 31, 1945, the S. S. *James Jackson,* a vessel owned by the United States (R. 57, 75) and husbanded by the

[1] Cargo battens are wooden strips fitted to the inboard side of the hull of the ship to prevent contacts between the cargo and metallic surfaces (R. 22).

[2] See *infra*, pp. 9–10.

South Atlantic Steamship Line[3] under a general agency agreement[4] (R. 2–3) docked in New York harbor (R. 75).

The ship's general agent requested Cardinal to perform all the necessary repairs on the vessel. The shipyard accordingly sent out a team consisting of Joseph Cardinal, George Cardinal, the yard's General Superintendent, Skaar, its ship foreman, and petitioner, its general supervisor or superintendent (R. 57–58), in order to survey the work to be done.

One of the defects requiring repair was the backing up of water from certain shower stalls into a kitchen, caused by some fault in the port scupper (drain); (R. 58, 77; 48, 69, 74). Repeated earlier attempts to remedy this flooding had been unsuccessful (R. 30).

An inspecting party, consisting of petitioner, George Cardinal, and Skaar (R. 71), entered the hold to determine whether the trouble was caused by the absence of a scupper or of a valve in it, or because either of them was clogged (R. 58). George Cardinal using a flashlight, discovered that there was no port scupper (R. 58, 76). The absence of this drain completely explained the flooding and indicated that the shipyard would

[3] South Atlantic Steamship Line is a copartnership composed of the individual respondents listed in the caption of the petition (R. 2).

[4] Cf. *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783.

have to install a new port scupper rather than clean out the existing one (R. 74). George Cardinal consequently was ready to leave the hold and to check on other repairs (R. 58, 72–74). In the meantime, petitioner had decided to inspect the valve of the starboard scupper line. For that purpose he climbed up the cargo battens. When he was about 18–20 feet from the floor of the hold, a metal clip supporting one of the battens broke as the result of a structural and unnoticeable defect (R. 59, 35–39), causing petitioner to fall.

Petitioner filed a libel against the United States and the partners of South Atlantic Steamship Line [5] to recover for the injuries resulting from this accident. The district court dismissed the libel, found that there was no negligence in the maintenance of the broken clip (R. 59) and held that petitioner was not within the class of persons to whom the owner of the ship owed a warranty of seaworthiness (R. 60). It found, in addition, that petitioner had not been ordered by anybody to climb the cargo batten and that it was unnecessary to inspect the starboard scupper line (R. 59). The Court of Appeals affirmed (R. 75–78). It agreed that petitioner was not a person to whom the ship owed a duty of seaworthiness (R. 76). With respect to petitioner's contention

[5] The libel against the individual defendants was dismissed on the authority of *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U. S. 783 (R. 61–62).

that the ship had failed to provide him with a safe place to work or to warn him of hidden dangers, the court found that when petitioner climbed the starboard battens he was on a needless exploratory expedition of his own.[6]

ARGUMENT

Petitioner apparently concedes that the break of the batten clip was not caused by any negligence on the part of the ship. He contends, however, that the court below erred in holding that he was not within the class of persons to whom the ship owes an absolute warranty of seaworthiness,[7] and claims that this liability without fault should extend to all business guests and invitees who perform any type of work aboard ship (Pet. 4). We

[6] The bland and unqualified assertions in the petition (p. 3) that petitioner had been ordered by the ship's engineer to inspect the valve and climb up the batten boards is contrary to the findings of the two courts below, not supported by any record reference, and contrary to the evidence at R. 20–22; 69; 72–74.

[7] The petition raises expressly only the question whether the warranty of seaworthiness extends to petitioner. He seems to argue, however, by implication, that by failing to supply him with a ladder and by requesting him to climb the unsafe battens the ship had breached its duty to supply him with a safe place to work. The concurrent findings of the two courts below (R. 59, 77), supported by ample evidence (*supra*, fn. 6) to the effect that petitioner's inspection of the starboard valve was unnecessary, that nobody had asked him to climb the battens and that the ship could not anticipate this needless exploratory expedition, dispose of this contention. *Faulkner* v. *Gibbs*, 338 U. S. 267, 268; *Comstock* v. *Group of Institutional Investors*, 335 U. S. 211, 214.

submit that the judgment below is correct and does not warrant further review.[8]

1. Petitioner asserts that all persons performing work aboard ship are covered by the warranty of seaworthiness and claims that this proposition is but the logical consequence of this Court's holdings in *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85. We submit that he cannot derive any support from that decision.

The *Sieracki* case held that a ship owed a warranty of seaworthiness to a longshoreman in spite of the fact that he was employed not by the ship but by an independent contractor, the stevedore. This result, however, was not based on a sweeping theory that this warranty extends to all persons performing work on behalf of the ship but on the far more limited consideration that the loading and unloading of the ship used to be performed by the crew (*Atlantic Transport Co.* v. *Imbrovek,* 234 U. S. 52, 61–62); *International Stevedore Co.* v. *Haverty,* 272 U. S. 50, 52). The Court concluded that the ship continued to owe the duty of seaworthiness to the persons performing those tasks, although as the result of modern methods of division of labor and of capricious methods of hiring they were no longer directly

[8] During the last few years this Court has denied certiorari in the cases in which the petitioner has made far less extravagant claims concerning the scope of the warranty of seaworthiness. *Bruszewski* v. *Isthmian S. S. Co.*, 333 U. S. 828; *Guerrini* v. *United States*, 335 U. S. 843; *Bruszewski* v. *United States*, 340 U. S. 865.

employed by the ship. In other words, that case did not increase the scope of the ship's absolute liability; it merely sought to prevent the erosion of a traditional protection which the maritime law had afforded to a specific type of work. (*Seas Shipping Co.* v. *Sieracki, supra,* at 96, 99, 100.)

The court below has correctly applied this basic theory of the *Sieracki* case. Thus it held in *Guerrini* v. *United States*[9]—on the authority of which it denied recovery in the instant case (R. 76)—that the ship owed no warranty of seaworthiness to the employee of an independent contractor who performed repair work on the ship. It pointed out that the relationship of these workers to the maritime world is frequently of the most casual nature[10] and that their relationship to their employers never partook of the paternalistic status of master and crew (167 F. 2d at p. 354). Moreover, the warranty of seaworthiness has never been regarded as extending

[9] 167 F. 2d 352, certiorari denied, 335 U. S. 843; to the same effect are *O'Connell* v. *Naess*, 176 F. 2d 138 (C. A. 2); *Miller* v. *The Sultana*, 176 F. 2d 203 (C. A. 2), certiorari denied, 338 U. S. 907; *Rich* v. *United States*, 192 F. 2d 858 (C. A. 2).

[10] Longshoremen specializing in the loading and unloading of ships have retained somewhat of an amphibious nature but repair workers usually are shorebound mechanics. Petitioner's contacts with the maritime world are very loose. He took engineering courses in air conditioning and refrigeration. Before working for the ship yard he was employed by the Radio Corporation of America and by an oil company (R. 25).

to the principal and typical tasks of ship yard employees: the performance of structural repairs [11] and the removal of the causes of unseaworthiness.[12]

2. These considerations show that the warranty of seaworthiness does not extend to ship yard employees performing repairs on board ship. They apply with particular force to the instant case in view of the nature of the prospective repair which had to be performed, and in view of the unusual circumstances surrounding petitioner's accident.

a. The repair in the instant case involved the installation of a new scupper line, a major structural repair. In other words it was of a nature which, historically, has not been performed by the crew (*Guerrini* v. *United States, supra,* at 354) and which, as the events in this case indicate, could not have been performed by the crew

[11] Structural repairs were outside the scope of the ship's work which was limited to the regular maintenance work. Hence, structural repairs are not covered by the *Sieracki* doctrine. Cf. *Guerrini* v. *United States*, 167 F. 2d 352, 354 (C. A. 2), certiorari denied, 335 U. S. 843.

[12] The warranty of seaworthiness does not extend to repairs designed to make the ship seaworthy. *Bruszewski* v. *Isthmian S. S. Co.*, 66 F. Supp. 210 (E. D. Penna.), affirmed, 163 F. 2d 720 (C. A. 3), certiorari denied, 333 U. S. 828; *Bruszewski* v. *United States War Shipping Admin.*, 88 F. Supp. 962 (E. D. Penna.), affirmed, 181 F. 2d 419 (C. A. 3), certiorari denied, 340 U. S. 865; *Armento* v. *United States*, 74 F. Supp. 198 (E. D. N. Y.); *De La Pena* v. *Moore-McCormack Lines*, 84 F. Supp. 698 (S. D. N. Y.); cf. *Byars* v. *Moore-McCormack Lines*, 155 F. 2d 587 (C. A. 2).

(*supra,* p. 3, R. 30). Hence, to apply the warranty of seaworthiness to this case would be to create a new liability rather than to prevent the destruction of an existing one.

b. Moreover, this case presents the unusual circumstance that the injury was not suffered by a worker actively engaged in the repair of the vessel,[13] but by a supervisory employee while he, together with other officials of the ship yard, was surveying the ship, preparatory to the award of the repair contract. He held the status of a business guest within the literal meaning of that term, not that of a helpless ward of the admiralty performing a maritime service (cf. *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85, 90–91, 93–94). This is certainly not a situation to which the exceptional incident of absolute liability without fault should attach.

3. Assuming, however, for the sake of argument, that petitioner was engaged in the ship's service when he surveyed the ship, he still cannot recover because the hidden defect in the batten clip did not render the ship unseaworthy.

The courts have ruled consistently that the purpose of cargo battens is merely to prevent the cargo from coming into contact with the hull of the vessel, and that they are not intended to be

[13] The facts do not bear out petitioner's supposition (Pet. 4) that he was a "shore mechanic working under the direct orders and supervision of the ship's Chief Engineer."

used as ladders.[14] Hence, the inability of a batten or of a batten clip to support a man's weight does not render a ship unseaworthy. *Holub* v. *Sword S. S. Line,* 132 F. 2d 206, 207 (C. A. 5); *Christiansen* v. *United States,* 94 F. Supp. 934, 936 (D. Mass.), affirmed, 192 F. 2d 199 (C. A. 1).

CONCLUSION

The decision of the court below is clearly correct, and further review is not warranted. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL 1952.

[14] *The Queen Elizabeth*, 209 Fed. 712 (N. D. Cal.); *Sulsenti* v. *Cadogan S. S. Co.*, 54 F. Supp. 570 (S. D. N. Y.), *Aurigemma* v. *Nippon Yusen Kaisha Co.*, 238 N. Y. 183; *Cangemi* v. *Lorentzen*, 1944 A. M. C. 880 (Sup. Ct. Kings Co. N. Y.); cf. R. 20–22).

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